



#13

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED

In re Application of:

MAR 17 2004

Inventor: John J. Wille, Jr. Attorney Docket No: 1194-011D

OFFICE OF PETITIONS

Serial No.: 09/694,393

Filing Date: October 23, 2000

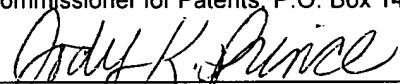
Bruce M. Kisliuk
Director, Technology Center 1600Title: PROTEIN-FREE DEFINED MEDIA
FOR THE GROWTH OF NORMAL
HUMAN KERATINOCYTES

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8 (A)

Date of Deposit: March 12, 2004

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as first-class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450



Jody K. PrincePETITION TO REVIVE UNINTENTIONALLY ABANDONED APPLICATION

Sir:

The above-identified application has become abandoned for failure to submit formal drawings in compliance with the Notice of Allowance. Initially, new drawings in the form of photomicrographs are enclosed. The entire delay in properly complying with the formal drawing requirement was unintentional.

Applicant believes that it will be obvious that the entire delay was unintentional inasmuch as formal drawings were submitted within the time frame noted in the NOA, but that they were found unacceptable inasmuch as the Examiner objected to the

numbering of the figures. Additionally, some photomicrographs became dislodged from their Bristol board mounts after arriving at the PTO. Since that initial submission, the PTO Rules have changed and Bristol board mounting no longer is acceptable. Therefore, the attached photomicrographs are not mounted but rather stand alone.

Applicant initially responded to the Notice of Abandonment with a Petition to Withdraw the Holding of Abandonment on January 23, 2003. That Petition was denied on March 13, 2003 with a notation that a renewed Petition must be submitted. A second Petition to Withdraw the Holding of Abandonment was filed on May 13, 2003. That Petition also was denied on January 12, 2004 indicating that the proper recourse is the instant Petition to Revive citing unintentional abandonment. Copies of the series of petitions and decisions are attached.

Applicant offers the following in-depth explanation and reiterates the facts as to events leading to this Petition to Revive. After receipt of the Notice of Abandonment, the undersigned was engaged in conversations with the following individuals telephonically and was communicating via facsimile concerning the formal drawings. Copies of the facsimile communications are attached. It should be noted that as early as May 21, 2002, following telephonic communications, Jody Prince, a paralegal in our office, faxed a post card receipt to Mr. Tom Hawkins in Publications, because Mr. Hawkins had indicated that he had not received the Letter to the Official Draftsman that accompanied the issue fee payment. Mr. Hawkins indicated that if he received our post card receipt and if he could locate the communication to which it referred, the holding of abandonment should be able to be withdrawn. The facsimile communication also

indicates that Cheryl Scotney would be calling Mr. Hawkins to discuss the matter. After several telephonic discussions with Mr. Hawkins concerning whether his receipt of our post card would cause the holding of abandonment to be withdrawn, to which a definite answer was never given, the undersigned first contacted the Examiner, Leon Lankford, Jr. at telephone number 703-308-2455 and was told to contact another person in Publications by the name of LaMonte Newsome at the telephone number 703-305-5358 in an attempt to receive an answer. The noted conversations took place over a period of months. When a holding of withdrawal of the abandonment was not forthcoming, the undersigned deemed it prudent to file a Petition requesting the same.

Additionally, concerning the formal drawings the undersigned interpreted the Notice of Allowability to require a replacement Fig. 1A. It was not interpreted to require replacement drawings for previously submitted and accepted photomicrographs mounted on Bristol board. Therefore, the issue fee payment was accompanied by a response explaining that Fig. 1A was not required. The undersigned wishes to explain that new formal drawings were not submitted because it was not understood that they were necessary. As noted in the Petition Decision, Fig. 4A had been entered. Therefore it was unclear to the undersigned that any formal drawings were required based upon a review of the facts and the history of the file itself. The undersigned believed that the response filed with the issue fee payment was a fully compliant response concerning the formal drawings.

In further explanation, the undersigned reiterates the following statements that were made in the previously-submitted Petitions:

By a PETITION RESPONSIVE TO NOTICE OF OMITTED ITEM(S) IN A
NONPROVISIONAL APPLICATION FILED UNDER 37 CFR 1.53(b) the following
information was provided (a portion of the exact text of that petition is restated herein as
follows):

A copy of Fig. 4A from Applicants photocopy made in
this office of the application exactly as it was submitted to
the PTO on October 23, 2000;

A copy of the patent application transmittal indicating
11 sheets of drawings; and

A copy of the return-receipt post card acknowledging
receipt of 11 sheets of formal photomicrographs.

Applicant respectfully submits that at the time of
receipt of the application in the PTO Mail Room, Fig. 4A was
attached as acknowledged by the PTO stamp on the Post
card indicating 11 sheets of formal photomicrographs.

Further evidencing the submission, Fig. 4A is
discussed in the specification at the following locations:

Brief Description of the Drawings at page 17, first
paragraph; and

Detailed Description of the Invention, Example 4, at
page 29, lines 1-5.

In order to advance prosecution, a newly prepared
Fig. 4A consisting of a mounted photomicrograph is
attached for the record.

Therefore, a review of the official PTO record will reflect that, when compared to
the specification as allowed, all drawings are present in the record and no further items
are necessary in order for the patent to proceed to issuance. However, responsive to

the Petition Decision, new photomicrographs are attached. Applicant respectfully request that this Petition be granted and that the application proceed to issuance.

Respectfully submitted,

Dated: 3/12/04

By: Cheryl S. Scotney

Cheryl S. Scotney, Reg. No. 46,218

Attorney for Applicant

Standley Law Group LLP

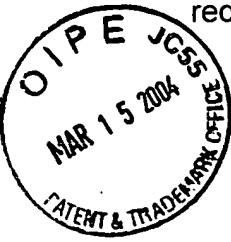
495 Metro Place South, Suite 210

Dublin, Ohio 43017-5319

Telephone: (614) 792-5555

Facsimile: (614) 792-5536

E-mail: cscotney@standleyllp.com





IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Inventor: John J. Wille, Jr.

Attorney Docket No: 1194-011D

Serial No.: 09/694,393

Filing Date: October 23, 2000

Bruce M. Kisliuk
Director, Technology Center 1600

Title: PROTEIN-FREE DEFINED MEDIA
FOR THE GROWTH OF NORMAL
HUMAN KERATINOCYTES

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8 (A)

Date of Deposit: May 13, 2003

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as first-class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Jody K. Prince

PETITION FROM THE EXAMINER'S HOLDING OF ABANDONMENT
UNDER 37 CFR 1.81(a)

Sir:

Responsive to the Petition Decision dated March 13, 2003, and in accordance with Director Kisliuk's recommendations, Applicant hereby petitions that the Examiner's holding of abandonment be withdrawn.

Responsive to point 1 raised in the Petition Decision, new photomicrographs mounted on Bristol board are attached.

Responsive to point 2, applicant offers the following in-depth explanation as to the time frame within which the previous petition was submitted. The undersigned was engaged in conversations with the following individuals telephonically and was communicating via facsimile. Copies of the facsimile communications are attached. It should be noted that as early as May 21, 2002, following telephonic communications, Jody Prince, a paralegal in our office, faxed a post card receipt to Mr. Tom Hawkins in Publications, because Mr. Hawkins had indicated that he had not received the Letter to the Official Draftsman that accompanied the issue fee payment. Mr. Hawkins indicated that if he received our post card receipt and if he could locate the communication to which it referred, the holding of abandonment should be able to be withdrawn. The facsimile communication also indicates that Cheryl Scotney would be calling Mr. Hawkins to discuss the matter. After several telephonic discussions with Mr. Hawkins concerning whether his receipt of our post card would cause the holding of abandonment to be withdrawn, to which a definite answer was never given, the undersigned first contacted the Examiner, Leon Lankford, Jr. at the telephone number 703-308-2455 and was told to contact another person in Publications by the name of LaMonte Newsome at the telephone number 703-305-5358 in an attempt to receive an answer. The noted conversations took place over a period of months. When a holding of withdrawal of the abandonment was not forthcoming, the undersigned deemed it prudent to file a Petition requesting the same. The undersigned believes that this explanation as to the length of time before filing the petition is sufficient to explain point 2 raised in the Petition Decision.

Responsive to point 3, the undersigned interprets the Notice of Allowability to require a replacement Fig. 1A. It was not interpreted to require replacement drawings for previously submitted and accepted photomicrographs mounted on Bristol board. Therefore, the issue fee payment was accompanied by a response explaining that Fig. 1A was not required. The undersigned wishes to explain that new formal drawings were not submitted because it was not understood that they were necessary. As noted in the Petition Decision, Fig. 4A had been entered. Therefore it was unclear to the undersigned that any formal drawings were required based upon a review of the facts and the history of the file itself. The undersigned believed that the response filed with the issue fee payment was a fully compliant response concerning the formal drawings. In explanation, the undersigned reiterates the following statements made in the previously-submitted Petition:

By a PETITION RESPONSIVE TO NOTICE OF OMITTED ITEM(S) IN A NONPROVISIONAL APPLICATION FILED UNDER 37 CFR 1.53(b) the following information was provided (a portion of the exact text of that petition is restated herein as follows):

A copy of Fig. 4A from Applicants photocopy made in this office of the application exactly as it was submitted to the PTO on October 23, 2000;

A copy of the patent application transmittal indicating 11 sheets of drawings; and

A copy of the return-receipt post card acknowledging receipt of 11 sheets of formal photomicrographs.

Applicant respectfully submits that at the time of receipt of the application in the PTO Mail Room, Fig. 4A was

attached as acknowledged by the PTO stamp on the Post card indicating 11 sheets of formal photomicrographs.

Further evidencing the submission, Fig. 4A is discussed in the specification at the following locations:

Brief Description of the Drawings at page 17, first paragraph; and

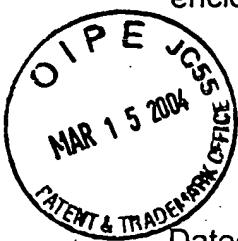
Detailed Description of the Invention, Example 4, at page 29, lines 1-5.

In order to advance prosecution, a newly prepared Fig. 4A consisting of a mounted photomicrograph is attached for the record.

Therefore, a review of the official PTO record will reflect that, when compared to the specification as allowed, all drawings are present in the record and no further items are necessary in order for the patent to proceed to issuance. However, responsive to the Petition Decision, newly mounted photomicrographs are attached. Applicants respectfully request that the holding of abandonment be withdrawn.

The undersigned believes that no petition fee is required in the instant Petition. However, should the above arguments not be persuasive, please accept this Petition as a Petition to Revive Under 37 C.F.R. 1.137(b). The undersigned believes that the arguments above reflect that Applicant and the undersigned acted in good faith by filing what they believed to be a fully responsive reply with the issue fee. Therefore, the undersigned believes that the abandonment was unavoidable in that no other course of action to be taken was apparent and that she believed that all appropriate responses and paperwork had been filed with the issue fee payment. Therefore, the undersigned believes that the higher standard of "unavoidable" abandonment has been met. The

Commissioner is authorized to charge the \$55.00 petition fee to Deposit Account 19-
4076 if it is determined that the petition fee is due. A duplicate of this document is
enclosed for such purpose.



Dated: 5/12/03

Respectfully submitted,

By: Cheryl S. Scotney
Cheryl S. Scotney, Reg. No. 46,218
Attorney for Applicant
Standley & Gilcrest LLP
495 Metro Place South, Suite 210
Dublin, Ohio 43017-5319
Telephone: (614) 792-5555
Facsimile: (614) 792-5536
E-mail: cscotney@standleyandgilcrest.com

Client & Matter Nos. HG 111119 1997-313 Serial No. Filing Date.

Applicant: John Doe

Title/Mark: XYZ Corporation

THE MAIL ROOM STAMP BELOW ACKNOWLEDGES RECEIPT OF THE FOLLOWING DOCUMENTS ON THE DATE INDICATED ON THE MAIL ROOM STAMP.

Appl'n for Patent with:

 pg of specification
 pg of Claims
 pg of Drawings Informal/Formal

Inventor's Declaration & Power of Atty.

Verified Small Entity Statement of Inventor

Verified Small Entity Statement of

Information Disclosure Statement

Response to Notice of Missing Parts

Amendment

Letter to Draftsman

 pg Formal Drawings

Issue Fee Forms

Assignment & Assignment Recordation Sheet

Check No: \$

Certificate of mailing date of 10/12/97

Appl'n for TM/SM with drawing and specimens of mark

Use based

ITU

Appl'n for Copyright Registration and deposits.

Request for Extension of time

Amendment to Allege Use

Statement of Use 10/12/97

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Confirmation Report - Memory Send

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Job number : 738
Date : May-21 10:09am
To : 917033054372---1194011
Document pages : 03
Start time : May-21 10:10am
End time : May-21 10:11am
Pages sent : 03
Status : OK

Job number : 738

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phone

703-305-8380

STANDLEY & GILCREST

LLP

Attorneys and Counselors at Law

495 Metro Place South, Suite 210
Dublin, Ohio 43017-5315
Telephone: (614) 792-5555
Facsimile: (614) 792-5536

FACSIMILE COVER SHEET

DATE: May 21, 2002

FACSIMILE NO.: 703-305-4372

TO: Tom Hawkins

COMPANY: USPTO

FROM: Jody Prince

Number of pages (including cover sheet) . 3 pages

SUBJECT: U.S. Serial No. 09/694,393

NOTES: Responsive to your conversation this date with Cheryl Scotney, attached is a copy of the communication that accompanied the issue fee transmittal concerning the formal drawings. A copy of the post card receipt is attached. I will telephone you today to discuss any further requirements.

CONFIRMATION: by First Class Mail
 by Express Mail
 none

CONFIDENTIALITY NOTICE

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CLIENT CODE: HYD 1194-011D

*PATENTS * TRADEMARKS * COPYRIGHTS * TRADE SECRETS * COMPUTER LAW

STANDLEY & GILCREST

LLP

Attorneys and Counselors at Law

495 Metro Place South, Suite 210
Dublin, Ohio 43017-5315
Telephone: (614) 792-5555
Facsimile: (614) 792-5536

FACSIMILE COVER SHEET

DATE: May 21, 2002

FACSIMILE NO.: 703-305-4372

TO: Tom Hawkins

COMPANY: USPTO

FROM: Jody Prince

Number of pages (including cover sheet) . 3 pages

SUBJECT: U.S. Serial No. 09/694,393

NOTES: Responsive to your conversation this date with Cheryl Scotney, attached is a copy of

the communication that accompanied the issue fee transmittal concerning the formal drawings. A copy

of the post card receipt is attached. I will telephone you today to discuss any further requirements.

CONFIRMATION: by First Class Mail
 by Express Mail
 none

CONFIDENTIALITY NOTICE

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CLIENT CODE: HYD 1194-011D

*PATENTS * TRADEMARKS * COPYRIGHTS * TRADE SECRETS * COMPUTER LAW

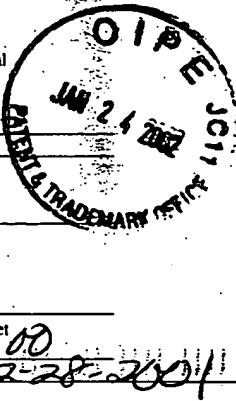
Client & Matter No. 111-C/194-0110 Serial No. 09694.393 Filing Date 10-23-03

Applicant: *Willie L. Kington & Co Funeral Media for the Grown*Title/Mark: *Funeral Media for the Grown*

THE MAIL ROOM STAMP BELOW ACKNOWLEDGES RECEIPT OF THE FOLLOWING DOCUMENTS ON THE DATE INDICATED ON THE MAIL ROOM STAMP.

- Appl'n for Patent with:
 pg of specification
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 pg of Drawings Informal/Formal
 Inventor's Declaration & Power of Atty.
 Verified Small Entity Statement of Inventor
 Verified Small Entity Statement of _____
 Information Disclosure Statement
 Response to Notice of Missing Parts
 Amendment _____
 Letter to Draftsman
 pg Formal Drawings
 Issue Fee Forms
 Assignment & Assignment Recordation Sheet
 Check No. 7402 \$ 640.00
 Certificate of mailing date of 12-28-2003
- Appl'n for TM/SM with drawing and specimens of mark
 Use based
 F.T.U.
 Appl'n for Copyright Registration and deposits.
 Request for _____ Extension of time
 Amendment to Allege Use
 Statement of Use

Exp. Rec. #



STANLEY & GILCREST LLP

Attorneys and Counselors at Law



495 Metro Place South

Suite 210

Dublin, Ohio 43017-5319

Telephone (614) 792-5555

Fax (614) 792-5536

RECEIVED

MAR 17 2004

OFFICE OF PETITIONS

BOX Issue Fee

Assistant Commissioner for Patents
Washington, D.C. 20231

Attention: OFFICIAL DRAFTSMAN

Re: U.S. Patent Application Serial No. 09/694,393
Title: Protein-Free Defined Media for the Growth of
Normal Human Keratinocytes
Filed: 12/23/2000
Notice of Allowability: 09/28/01
Batch No.: M72
Attorney Docket No.: HYG 1194-011D

Sir:

This Paper is filed responsive to the Notice of Allowability, wherein the Examiner has requested a Fig. 1A. A review of the specification will confirm that there is, in fact, no Fig. 1A in the application. The Figures began with Fig. 1B. Therefore, it respectfully is submitted that no further drawings are required.

The issue fee accompanies this response. Therefore, all requirements having been met, the patent should proceed to issuance.

Respectfully submitted,

A handwritten signature in black ink that reads "Cheryl S. Scotney".

Cheryl S. Scotney

CSS:jkp
Encs.

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8 (A)

Date of Deposit: December 28, 2001

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as first-class mail in an envelope addressed to BOX ISSUE FEE, Commissioner for Patents, Washington, D.C. 20231.

A handwritten signature in black ink that reads "Jody K. Prince".

PART B—ISSUE FEE TRANSMITTAL

Complete and mail this form, together with applicable fees, to: Box ISSUE FEE
Assistant Commissioner for Patents
Washington, D.C. 20231

HJ

MAILING INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE. Blocks 1 through 4 should be completed where appropriate. All further correspondence including the Issue Fee Receipt, the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Legibly mark-up with any corrections or use Block 1)

008698
STANLEY & GILCREST LLP
495 METRO PLACE SOUTH
SUITE 210
DUBLIN OH 43017



Note: The certificate of mailing below can only be used for domestic mailings of the Issue Fee Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing.

Certificate of Mailing

I hereby certify that this Issue Fee Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Box Issue Fee address above on the date indicated below.

Jody K. Prince

(Depositor's name)

Jody K. Prince

12-28-2001

(Signature)

(Date)

APPLICATION NO.	FILING DATE	TOTAL CLAIMS	EXAMINER AND GROUP ART UNIT	DATE MAILED
09/694,393	10/23/00	006	LANKFORD JR, L	1651 09/28/01
First Name of Applicant	WILLE,	35 USC 154(b) term ext. = 0 Days.		

NAME OF INVENTION PROTEIN-FREE DEFINED MEDIA FOR THE GROWTH OF NORMAL HUMAN KERATINOCTYES

ATTY'S DOCKET NO.	CLASS-SUBCLASS	BATCH NO.	APPLN. TYPE	SMALL ENTITY	FEES DUE	DATE DUE
1. HYG 1194-011	435-404.000	M72	UTILITY	YES	\$620.00	12/28/01

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363). Use of PTO form(s) and Customer Number are recommended, but not required.

2. For printing on the patent front page, list:

(1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 Standley & Gilcrest LLP

2 _____

3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the PTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE Hy-Gene Biomedical, Inc.

(B) RESIDENCE: (CITY & STATE OR COUNTRY) Charlotte, North Carolina

Please check the appropriate assignee category indicated below (will not be printed on the patent)

individual corporation or other private group entity government

4a. The following fees are enclosed (make check payable to Commissioner of Patents and Trademarks):

Issue Fee

Advance Order - # of Copies _____

4b. The following fees or deficiency in these fees should be charged to:

DEPOSIT ACCOUNT NUMBER _____
(ENCLOSE AN EXTRA COPY OF THIS FORM)

Issue Fee

Advance Order - # of Copies _____

The COMMISSIONER OF PATENTS AND TRADEMARKS IS requested to apply the Issue Fee to the application identified above.

(Authorized Signature)

Henry S. Scobey

(Date)

12-28-01

NOTE: The Issue Fee will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the Patent and Trademark Office.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending on the needs of the individual case. Any comments on the amount of time required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, D.C. 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND FEES AND THIS FORM TO: Box Issue Fee, Assistant Commissioner for Patents, Washington D.C. 20231

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ATTORNEYS AND COUNSELORS AT LAW
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7402

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SECURITY FEATURES: MICRO PRINT BORDERS - COLORED BRICK PATTERN - WATERMARK & CARBON STRIP ON REVERSE SIDE - MISSING FEATURE INDICATES A COPY

000740210 0440000370 9802409144

Client & Matter No. HYG 194010 Serial No. 09/094393 Filing Date 10-23-08

Applicant: Will

Title/Mark:

THE MAIL ROOM STAMP BELOW ACKNOWLEDGES RECEIPT OF THE FOLLOWING DOCUMENTS ON THE DATE INDICATED ON THE MAIL ROOM STAMP.

Appl'n for Patent with:

- pg of specification
- pg of Claims
- pg of Drawings Informal/Formal

Inventor's Declaration & Power of Atty.

Verified Small Entity Statement of Inventor

Verified Small Entity Statement of

Information Disclosure Statement

Response to Notice of Missing Parts

Amendment

Letter to Draftsman

pg Formal Drawings

Issue Fee Forms

Assignment & Assignment Recordation Sheet

Check No. 7402 \$ 040.00

Certificate of mailing date of 12-28-2008

Appl'n for TM/SM with drawing and specimens of mark

Use based

RRU

Appl'n for Copyright Registration and deposits.

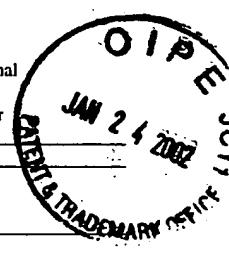
Request for Extension of time

Amendment to Allege Use

Statement of Use

Exp. Rec. #

Exp. Rec. #





UNITED STATES
PATENT AND
TRADEMARK OFFICE

★ ★ ★

MAR 13 2003

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STANDLEY & GILCREST

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

STANDLEY & GILCREST LLP
495 METRO PLACE SOUTH
SUITE 210
DUBLIN OH 43017



In re Application of
John J. Wille, Jr.
Serial No.: 09/694,393
Filed: October 23, 2000
Attorney Docket No.: 1194-011D

: PETITION DECISION

This letter is in regard to the petition (under 37 CFR 1.181) filed January 29, 2003, to withdraw the Notice of Abandonment. Applicant should note that the Serial Number on the petition is incorrect and delayed correlating the petition with the application file.

BACKGROUND

A review of the file history shows that this application was filed on October 23, 2000, and consisted of (according to the transmittal letter) 36 pages of specification and claims, 11 sheets of drawing, a 3 page declaration and a small entity filing fee and a return postcard. The drawings consisted of photomicrographs mounted on a Bristol Board backing. Upon receipt and processing of the application a Notice of Omitted Items was mailed to applicant on January 2, 2001. The missing item was identified as Figure 4A. On February 15, 2001, applicant replied by supplying a copy of Figure 4A and a petition to accept the omitted figure as having been part of the original filing, as evidenced by the Office date stamped return postcard which does not indicate that any figures are missing from the originally filed application papers. No formal decision on the petition appears in the record, however it appears that the petition was accepted and Figure 4A, as supplied with the petition, entered.

The examiner allowed the application on first action appending to the Notice of Allowability a requirement that missing Figure 1A be supplied. The Notice of Allowance and Issue Fee Due and the Notice of Allowability, both mailed to applicant on September 28, 2001, set a three month statutory period for paying the Issue Fee and supplying the additional drawing. The Issue Fee was timely paid on January 24, 2002. It appears that no reply to the requirements of the Notice of Allowability was made. A Notice of Abandonment was mailed to applicant on May 14, 2002, indicating that new formal drawings had not been received. Applicant then filed this petition on January 29, 2003.

STANDLEY & GILCREST
Received for Docketing
Date: 03/18/03 XLL

DISCUSSION

All of the difficulties with this application revolve around the drawings. M.P.E.P. 608.02 sets forth drawing standards for photographic submissions, as follows:

(b) **Photographs . —**

(1) Black and white . Photographs, including photocopies of photographs, are not ordinarily permitted in utility and design patent applications. The Office will accept photographs in utility and design patent applications, however, if photographs are the only practicable medium for illustrating the claimed invention. For example, photographs or photomicrographs of: electrophoresis gels, blots (e.g., immunological, western, Southern, and northern), autoradiographs, cell cultures (stained and unstained), histological tissue cross sections (stained and unstained), animals, plants, in vivo imaging, thin layer chromatography plates, crystalline structures, and, in a design patent application, ornamental effects, are acceptable. If the subject matter of the application admits of illustration by a drawing, the examiner may require a drawing in place of the photograph. The photographs must be of sufficient quality so that all details in the photographs are reproducible in the printed patent.

Photographs or photomicrographs (not photolithographs or other reproductions of photographs made by using screens) printed on sensitized paper are acceptable as final drawings, in lieu of India ink drawings, to illustrate inventions which are incapable of being accurately or adequately depicted by India ink drawings, e.g., electrophoresis gels, blots, (e.g., immunological, western, Southern, and northern), autoradiographs, cell cultures (stained and unstained), histological tissue cross sections (stained and unstained), animals, plants, in vivo imaging, thin layer chromatography plates, crystalline structures, metallurgical microstructures, textile fabrics, grain structures and ornamental effects. The photographs or photomicrographs must show the invention more clearly than they can be done by India ink drawings and otherwise comply with the rules concerning such drawings.

Photographs submitted in lieu of ink drawings must comply with 37 CFR 1.84(b). There is no requirement for a petition or petition fee, and only one set of photographs is required. See 1213 O.G. 108 (Aug. 4, 1998) and 1211 O.G. 34 (June 9, 1998) and 37 CFR 1.84(b)(1).

Such photographs to be acceptable must be made on photographic paper having the following characteristics which are generally recognized in the photographic trade: double weight paper with a surface described as smooth with a white tint. **Note that photographs filed on or after October 1, 2001 may no longer be mounted on Bristol Board.** See 37 CFR 1.84(e) and 1246 O.G. 106 (May 22, 2001). If several photographs are used to make one sheet of drawings, the photographs must be contained (i.e., developed) on a single sheet.

Applicant supplied Bristol Board mounted photographs with the original application papers. However, it appears that the photographs were not securely mounted to the Bristol Board, as required. This is evidenced by the discovery in initial processing of a blank sheet of Bristol Board containing the legend "Fig 4A" but no photograph. One loose photograph was found with the papers. However, the Office cannot assume that the loose photograph is the one which should have been mounted on the blank sheet of Bristol Board. For this reason the Notice of Omitted Items was mailed to applicant. In response, a new Bristol Board mounted photograph was submitted.

During examination the examiner noted that Figures 1B-1D were present, but not Figure 1A. The specification does not mention a Figure 1A. Thus the omission of Figure 1A appears not to have been an oversight and the examiner's requirement that it be supplied in response to the Notice of Allowability was improper. However, applicant in any future applications should number and letter drawings beginning with number "1" and letter "A" so as to avoid confusion or questions as to whether a drawing figure is missing or not. During examination several other photographs have become detached from their Bristol Board mounting. Clearly the originally supplied photographs were not properly mounted on Bristol Board in a secure manner. As an application's specification and drawings are disassembled and individually processed during the printing process, the existence of loose photographs would inevitably lead to errors in printing, such as missing figures or incorrectly numbered figures. The examiner's requirement for new drawings is therefor maintained. Note also the bold portion of the section quoted above.

It is further noted that this petition was filed more than eight months after the Notice of Abandonment was mailed to applicant. 37 CFR 1.181(f) requires that petitions be filed within two months of the action complained of, in this case abandonment of the application. Failure to do so may be cause for dismissal of the petition. The time period is indicated as non-extendable. Applicant's petition indicates that the application has been discussed several times with the examiner. In consulting with the examiner, the examiner of record in this application fails to remember any discussions with applicant about this application. It may be that applicant spoke with other Office personnel, which remain unidentified, but applicant did not speak with the examiner of record. Nor does the petition indicate what the subject of any such discussions was. Other than the referred to discussions, no reasonable reason is given for the delay in filing this petition.

DECISION

Applicant's petition is **DISMISSED**. Applicant may submit a renewed petition requesting reconsideration of this decision upon satisfaction of the following conditions:

1. New drawings in compliance with the guidelines set forth above for photographic drawings must be submitted within TWO MONTHS of the mail date of this decision. No extension of this time period will be permitted.
2. A satisfactory explanation of the reason for delay in filing the original petition must be submitted.
3. A satisfactory reason for not filing a reply to the Notice of Allowability requirement for new drawings is also required. As noted in the Notice of Abandonment this application was held abandoned for failure to file new drawings, as required in the Notice of Allowability. This likely refers to the requirement to submit a Figure 4A, but may also be extended to apply to the poorly mounted photographs. In view of this requirement, applicant may wish to consider the filing of a petition under 37 CFR 1.137(a) or (b).

Any renewed petition must be submitted within TWO MONTHS of the mailing date of this petition decision in order to be considered timely. No extension of this time period will be permitted.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, Washington, D.C. 20231, or by telephone at (703)308-3824 or by facsimile transmission at (703) 305-7230.



Bruce M. Kisliuk
Director, Technology Center 1600

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re Application of:

Inventor: John J. Wille, Jr.

Attorney Docket No: 1194-011D

Serial No.: 09/694,394

Customer Service Center/Initial
Patent Examination Division
Group Art Unit: 1636

Filing Date: October 23, 2000

Title: PROTEIN-FREE DEFINED MEDIA
FOR THE GROWTH OF NORMAL
HUMAN KERATINOCYTES

Commissioner for Patents
Washington, D.C. 20231

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8 (A)

Date of Deposit: Jan. 23, 2003

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as first-class mail in an envelope addressed to Commissioner for Patents, Washington, D.C. 20231.

Jody K. Prince

PETITION FROM THE EXAMINER'S HOLDING OF ABANDONMENT
UNDER 37 CFR 1.81(a)

Sir:

Applicant hereby petitions that the Examiner's holding of abandonment be withdrawn. The undersigned has discussed the application several times with the Examiner since the Notice of Abandonment. In order to expedite the procedure, the instant Petition is being submitted. This Petition will confirm that all drawings referred to in the application have been submitted and the application is complete as it exists in the current PTO record.

By a PETITION RESPONSIVE TO NOTICE OF OMITTED ITEM(S) IN A
NONPROVISIONAL APPLICATION FILED UNDER 37 CFR 1.53(b) the following

information was provided (a portion of the exact text of that petition is restated herein as follows):

A copy of Fig. 4A from Applicants photocopy made in this office of the application exactly as it was submitted to the PTO on October 23, 2000;

A copy of the patent application transmittal indicating 11 sheets of drawings; and

A copy of the return-receipt post card acknowledging receipt of 11 sheets of formal photomicrographs.

Applicant respectfully submits that at the time of receipt of the application in the PTO Mail Room, Fig. 4A was attached as acknowledged by the PTO stamp on the Post card indicating 11 sheets of formal photomicrographs.

Further evidencing the submission, Fig. 4A is discussed in the specification at the following locations:

Brief Description of the Drawings at page 17, first paragraph; and

Detailed Description of the Invention, Example 4, at page 29, lines 1-5.

In order to advance prosecution, a newly-prepared Fig. 4A consisting of a mounted photomicrograph is attached for the record.

Therefore, a review of the official PTO record will reflect that, when compared to the specification as allowed, all drawings are present in the record and no further items are necessary in order for the patent to proceed to issuance. Applicants respectfully request that the holding of abandonment be withdrawn.

The undersigned believes that no petition fee is required in the instant Petition.

However, should it be determined that the fee is due, the Commissioner is authorized to charge Deposit Account 19-4076 in the appropriate amount. A duplicate of this Petition is enclosed for such purpose.

Respectfully submitted,

Dated:

1/27/03

By:

Cheryl S. Scotney

Cheryl S. Scotney, Reg. No. 46,248
Attorney for Applicant
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495 Metro Place South, Suite 210
Dublin, Ohio 43017-5319
Telephone: (614) 792-5555
Facsimile: (614) 792-5536
e-mail: cscotney@standleyandgilcrest.com



Client & Matter Nos.

Applicant:

Title/Mark:

NYC1194-D110 Serial No. 09/1694394 Filing Date: 10-23-08
THE MAIL ROOM STAMP BELOW ACKNOWLEDGES RECEIPT OF THE FOLLOWING

DOCUMENTS ON THE DATE INDICATED ON THE MAIL ROOM STAMP.

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 Inventor's Declaration & Power of Atty. Verified Small Entity Statement of Inventor Verified Small Entity Statement of _____ Information Disclosure Statement Response to Notice of Missing Parts Amendment _____ Letter to Draftsman

____ pg Formal Drawings

 Issue Fee Forms _____ Assignment & Assignment Recordation Sheet Check No: _____ \$ _____ Certificate of mailing date of 10-23-2008 Appl'n for TM/SM with drawing and specimens of mark Use based ITU Appl'n for Copyright Registration and deposits. Request for _____ Extension of time Amendment to Allege Use Statement of Use Abandonment _____ _____

Exp. Rec. # _____